

PLM-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

Request for payment of Accrued Annual Leave and travel Allowances 10,751

FILE: B-193799

DATE: July 13, 1979

MATTER OF: Lieutenant Colonel Raymond J. Bohn

DIGEST: An Army Reserve officer on indefinite active duty assigned to the Selective Service System who is voluntarily relieved from active duty in the Army and immediately thereafter is voluntarily recalled to active duty in the same grade in the Army Reserve and assigned to the Army National Guard without any break in service is not entitled to payment for accrued leave or travel allowances.

The issue presented here upon a request for an advance decision from the Finance and Accounting Officer at Fort Carson, Colorado, is whether an Army Reserve officer on indefinite active duty who is relieved from active duty voluntarily and is immediately thereafter voluntarily recalled to active duty as an Army Reserve officer is entitled to be paid accrued annual leave pursuant to 37 U.S.C. 501 (1976) and travel allowances in the circumstances described. The answer on payment of both accrued annual leave and travel allowances is no.

Lieutenant Colonel Raymond J. Bohn, 502-16-3964, was ordered to active duty for an indefinite period as an Army Reserve officer and assigned to the State Headquarters of the Selective Service System in Bismarck, North Dakota, effective February 14, 1963. He was voluntarily relieved from active duty on August 15, 1975, pursuant to section XX, chapter 3, Army Regulation (AR) 635-100, at which time he was paid \$4,376.04 for 60 days' accrued leave and \$67.25 travel allowances. Orders were issued dated August 13, 1975, 2 days prior to his release from active duty, recalling him to active duty effective August 16, 1975, assigning him to the Army National Guard Bureau with duty station in Bismarck, North Dakota. A determination was later made by the Finance and Accounting Officer at Fort Carson, Colorado, that Colonel Bohn was erroneously paid for the 60 days' accrued leave and the travel allowance. Collection action was initiated in March 1976 and completed March 1977.

In requesting an advance decision, the finance officer has cited our decision of 31 Comp. Gen. 668 (1952) as possible authority for payment of the accrued leave. The Chief, Field Service

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B-193799

Officer of the Army Finance and Accounting Center, has cited Rule 2, Table 4-4-2, Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), and our decision 31 Comp. Gen. 387 (1952) as the authority for denying payment of accrued leave to Colonel Bohn and paragraph M4157-2, Joint Travel Regulations, Volume 1 (1 JTR) as the authority for denying the travel allowance.

Under the provisions of 37 U.S.C. 404(a)(3) a member of the uniformed services is entitled to travel and transportation allowances upon separation from the service or release from active duty. Implementing regulations are found in 1 JTR. Paragraph M4157-2 provides that a member who is separated from the service or relieved from active duty for the express purpose of continuing on active duty in the same or another status is not entitled to travel allowances in connection therewith. Also, compare 42 Comp. Gen. 35 (1962). Therefore, the payment of travel allowances to Colonel Bohn in the circumstances of his voluntary release from active duty and immediate voluntary recall to active duty on orders issued 2 days before his release from active duty was in error and collection of the erroneous payment was proper.

The statutory authority for lump-sum payments of accrued leave is 37 U.S.C. 501(b). It provides in part that an officer who had accrued leave to his credit at the time of his discharge is entitled to be paid for that leave; however, such payment may not be made to a member who is discharged for the purpose of accepting an appointment in his armed force in which case the member carries his accrued leave from one status to the other in his armed force. Subsection 501(a)(1)(B) of title 37 (1970) (now 37 U.S.C. 501(a)(2)) defined the term "discharge" as used in subsection 501(b) to mean, in the case of an officer, "separation or release from active duty under honorable conditions."

Paragraph 40401, DODPM, implementing 37 U.S.C. 501(b), provides that a member who is discharged under honorable conditions is entitled to payment for unused accrued leave unless he continues on active duty under conditions which require accrued leave to be carried forward. Rules 4 and 5, Table 4-4-2 of that manual provide the two conditions in which Reserve officers may be paid accrued leave on release from active duty and immediately reenter on active duty. Rule 4 provides that accrued leave is payable to a Reserve officer released from active duty under honorable conditions under 10 U.S.C. 681 or similar laws authorizing release of Reserve officers at convenience

B-193799

of the Government, not for the purpose of reentering active duty, and who immediately reenters on active duty. Rule 5 provides that accrued leave is payable to a Reserve officer released from active duty at the end of a specified period of time he agreed to serve or was obligated to serve and who immediately reenters on active duty.

Colonel Bohn's case does not appear to fall within either of the provisions of Rule 4 or 5 since he was not released from active duty at the expiration of an active duty agreement and, he voluntarily applied for release from active duty pursuant to AR 635-100 and voluntarily returned to active duty to serve in another capacity.

Our decision 31 Comp. Gen. 668, to which the Finance Officer refers as possible authority for paying Colonel Bohn for his leave, involved an enlisted member who was discharged to accept a commission in the Army and who upon being involuntarily released from active duty as a commissioned officer, reenlisted in his prior enlisted grade. It was held that he was entitled to a lump-sum payment for accrued leave since his involuntary release from active duty as a commissioned officer did not constitute a discharge for the purpose of entering into an enlistment. The type of release referred to in that decision would fall under Rule 4 of DODPM, Table 4-4-2, which, as is noted above, differs from Colonel Bohn's situation.

Instead, Colonel Bohn's service appears to have been of the type which we have held does not entitle a member to payment for leave. For example, 35 Comp. Gen. 25 (1955) involved an officer who, while serving on active duty as a Reserve lieutenant colonel in the Army, accepted an appointment as a Regular warrant officer and about 2 months later was released from active duty as a lieutenant colonel and effective the next day reverted to his Regular warrant officer grade on active duty. In that decision we held that the service was continuous and the officer was not entitled to payment for accrued leave upon his release from active duty as a lieutenant colonel. See also B-176858, December 12, 1973.


Similarly, in 31 Comp. Gen. 387, supra, we held that a Regular Navy officer serving on active duty whose commission was terminated and who on the day following the termination accepted a commission in the Naval Reserve and continued on active duty without a break in service was not entitled to payment for accrued leave incident to the change in status.

B-193799

Since Colonel Bohn's call to active duty on January 31, 1963, was for an indefinite period, his release on August 15, 1975, from active duty was not a release at the expiration of an agreed term of service as a Reserve officer; neither was his release an involuntary separation. It therefore must be determined that such service was continuous.

Accordingly, on the record before us, it is our view that he was not separated or released from active duty within the meaning of 37 U.S.C. 501(a) and (b) and, therefore, he is not entitled to payment for unused accrued leave. DODPM, Table 4-4-2, Rule 2. Of course he was entitled to carry his accrued leave forward with him in his new assignment under the August 13, 1975 orders.

Since payment is not authorized, the voucher submitted is being retained in our Office.


Deputy Comptroller General
of the United States